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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9
10 NATIONSTAR MORTGAGE LLC,

11 Plaintiff,

Case No. 2:15-cv-01992-LDG (CWH)

12 v.

ORDER

13 GIAVANNA HOMEOWNERS
14 ASSOCIATION, *et al.*,

15 Defendants.

16 And Related Cross-Claims and
17 Counterclaims.

18
19 Defendant Giavanna Homeowners Association filed a Motion for Summary
20 Judgment (ECF No. 74). The parties stipulated to extend the time to oppose the motion
21 (ECF No. 77), which stipulation the Court granted (ECF No. 79). In part, the extension was
22 granted to allow a single response to the HOA's motion and an anticipated motion for
23 summary judgment to be filed by defendant SFR Investments Pool 1, LLC. SFR
24 Investments subsequently filed a motion for partial summary judgment (ECF No. 81), that it
25 captioned as "regarding a pure issue of law: Application of the return doctrine post-Bourne

1 Valley.” The matter was fully briefed, though (given the nature of the motion) the
2 opposition did not address the HOA’s motion.

3 The Court subsequently granted (ECF No. 92) plaintiff Nationstar Mortgage LLC’s
4 Motion to Amend Complaint (ECF No. 36). The parties entered into a stipulation (ECF No.
5 100) permitting Nationstar and cross-defendant Bank of America, N.A. (BANA), leave to
6 withdraw and refile their then-pending motion for summary judgment. The parties noted, in
7 part, the filing of the amended complaint. The Court granted that stipulation (ECF No.
8 108).

9 The parties further stipulated to extend the deadline for Nationstar and BANA to file
10 their motion (ECF No. 105), which the Court granted (ECF No. 107). The parties noted, in
11 part, the pending Objection to Magistrate Judge’s Order (ECF No. 90) filed by SFR
12 Investments.

13 On June 9, 2017, the parties filed a stipulation to stay this matter pending final
14 resolution of a petition for writ of certiorari to the United States Supreme Court (ECF No.
15 111). The Court granted that stay on June 16, 2017. A review of the Supreme Court’s
16 docket reveals that certiorari was denied on June 26, 2017.

17 Nationstar and BANA filed their motion for summary judgment on August 8, 2017
18 (ECF No. 115). No oppositions have been filed as of this date. However, SFR
19 Investments moved to strike (ECF No. 116), arguing that the stay in this matter had not
20 been lifted. SFR Investments further moved to continue the stay (ECF No. 117) pending a
21 ruling by the Nevada Supreme Court on a certified question.

22 Motion to Strike & Motion to Stay

23 This Court stayed this matter “pending final resolution of the Bourne Valley
24 certiorari proceeding before the United States Supreme Court.” The certiorari proceeding
25 was finally resolved on June 26, 2017. Accordingly, the stay of proceedings in this matter
26 was automatically lifted on that date. As neither party notified the Court that the

1 proceedings had terminated, the Court's docket was not modified to reflect that the matter
2 was no longer stayed. Accordingly, the Court will deny the motion to strike.

3 The Court will not impose a new stay on this matter pending the Nevada Supreme
4 Court's ruling on a question that has been certified to it.

5 In light of these rulings, the Court will extend the date by which oppositions must be
6 filed to Nationstar's and BANA's motion for summary judgment.

7 Objections to Magistrate Judge's Order

8 SFR Investments filed its objection to Magistrate Judge's Order in the alternative to
9 its motion that the Magistrate Judge reconsider his order. That is, SFR Investments
10 presented the identical argument to this Court as it did to the Magistrate Judge. Magistrate
11 Judge Hoffman denied the motion for reconsideration without prejudice, noting that it was
12 unclear "exactly how SFR requests that the court change each of its rulings." The
13 Magistrate Judge granted SFR Investments leave to re-file its motion to correct the noted
14 deficiencies. SFR Investments did not re-file its motion. Accordingly, the Court will deny
15 SFR Investments' objection.

16 Motion for Partial Summary Judgment

17 In its motion for partial summary judgment, SFR Investments asks this Court to
18 determine that, subsequent to the Ninth Circuit's holding in *Bourne Valley Court Trust v.*
19 *Wells Fargo Bank, N.A.*, 832 F.3d 1154, 1156 (9th Cir. 2016) that "Nevada Revised Statutes
20 section 116.3116's "opt-in" notice scheme facially violated mortgage lenders' constitutional
21 due process rights, §116.3116's "notice scheme" should be returned to its 1991 version.
22 SFR Investments relies upon what it terms the "Return Doctrine:" that "if a statutory
23 amendment is deemed unconstitutional, then the statute 'returns' to its pre-amendment
24 version." Points and Authorities, p.6, II.3-4 (ECF No. 81). In support, SFR Investments
25 cites *We the People Nevada v. Miller*, 124 Nev. 874, 889 (2008) for the proposition that,
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“when a statute is declared unconstitutional, it has no effect and the prior governing statute is revived.”

In *We the People*, the Nevada Supreme Court went on to note that “[b]ecause we have declared the current version of NRS 295.056(3) unconstitutional, the former version of that provision remains in effect.” In its holding, the Ninth Circuit stated that “§116.3116 ‘opt-in’ notice scheme facially violated mortgage lenders’ constitutional due process rights.” *Bourne Valley*, 832 F.3d at 1160. The Ninth Circuit did not expressly identify any specific provision of §116.3116 in its holding. However, in its opinion, the appellate court referenced §116.31163(2), as it requires “notice of default and election to sell be mailed to ‘any holder of a security interest encumbering the unit’s owner’s interest who has notified the association, 30 days before the recordation of the notice of default, of the security interest.’” The court further referenced §116.311635.¹ As then enacted, §116.311635(2)(b) required the mailing of the notice of time and place of the sale to “[t]he holder of a recorded security interest or the purchaser of the unit, if either of them has notified the association, before the mailing of the notice of sale, of the existence of the security interest, lease or contract of sale, as applicable.” AB 612, 1993 Nevada Statutes, Ch. 573, §7(2)(b).

SFR Investments does not, however, ask that the Court determine that the former versions of §§116.31163(2) and .31165(2)(b) remain in effect. It does not even ask the Court to more generally find that the former versions of §§116.31163 and .311635 remain in effect. This is unsurprising, as there are no prior versions of either provision. Rather, SFR Investments asks the Court to revive a “notice scheme” that is contained in a different provision within §116.3116 (specifically §116.311638) because §116.311638 was also amended in the same statute that enacted §§116.31163 and .311635. In effect, SFR

¹ *Bourne Valley* contains what appears to be an obvious typographical error, as it cites to §116.31165 (which does not exist) rather than §116.311635 (which contained an “opt-in” notice provision).

1 Investments asks the Court to find that, because the Ninth Circuit's held in *Bourne Valley*
2 holding that §116.31163(2) and §116.311635(2)(b) are facially unconstitutional, the Ninth
3 Circuit implicitly determined that §116.31168, as enacted at the time of the foreclosure
4 sale, was also unconstitutional. The Court will not do so. As the Ninth Circuit did not hold
5 that §116.31168 is unconstitutional, the Court will not "revive" the 1991 version of that
6 provision.

7 **HOA's Motion for Summary Judgment**

8 Finally, given that the Court permitted Nationstar to amend its complaint, and given
9 that the Court has extended the briefing schedule for Nationstar and BANA's motion for
10 summary judgment, and given that the HOA's motion for summary judgment has never
11 been fully briefed, the Court will deny that motion without prejudice, but with leave to renew
12 the motion.

13 ACCORDINGLY,

14 THE COURT **ORDERS** that Defendant Giavanna Homeowners Association's Motion
15 for Summary Judgment (ECF No. 74) is DENIED without prejudice as moot. Defendant
16 Giavanna Homeowners Association may, at its discretion, renew its motion by re-filing it or
17 filing a new motion for summary judgment. If Defendant Giavanna Homeowners
18 Association elects to renew its motion, it must do so not later than fourteen days after the
19 date this Order is signed.

20 THE COURT FURTHER **ORDERS** that SFR Investments Pool 1, LLC's Motion for
21 Partial Summary Judgment (ECF No. 81) is DENIED.

22 THE COURT FURTHER **ORDERS** that SFR Investments Pool 1, LLC's Objections
23 (ECF No. 90) are DENIED.

24 THE COURT FURTHER **ORDERS** that SFR Investments Pool 1, LLC's Motion to
25 Stay Litigation (ECF No. 117) is DENIED.

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1 THE COURT FURTHER **ORDERS** that SFR Investments Pool 1, LLC's Motion to
2 Strike (ECF No. 116) is DENIED.

3 THE COURT FURTHER **ORDERS** that the time for filing points and authorities in
4 response to the Motion for Partial Summary Judgment (ECF No. 115) is EXTENDED as
5 follows: Points and Authorities must be filed in response to the Motion for Partial Summary
6 Judgment not later than 21 days after the date this Order is signed.

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8 DATED this 25 day of September, 2017.

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Lloyd D. George
United States District Judge